

¹The Incident Investigation Report Form (dated November 15, 2000) lists the date of accident as November 14, 2000. The November 15, 2000, report from David W. Cathcart, D.O., says the accident happened "yesterday", which would be November 14, 2000. However, in the preliminary hearing and in the E-1, the date of accident is given as November 15, 2000.

of pain in his low back. Claimant alleges the onset of pain also included his neck. Claimant advised respondent of the injury and an Incident Investigation Report Form was completed on November 15, 2000. This form, which was signed by Stew Corwin, discusses a low back strain, with the effected body part identified as the lower back. There is no mention of claimant's cervical spine.

Claimant first began receiving treatment with David W. Cathcart, D.O., on November 15, 2000. The complaints at the time included pain in claimant's low back with radiculopathy into his left leg. There was no mention of cervical involvement. Claimant continued receiving treatment with Dr. Cathcart, Dr. Mujica, Jack Bridges, M.D., and Charles Edwards, R.P.T., for low back pain with radiculopathy into his legs and feet. No mention of the cervical spine is contained in the record until the entry by Dr. Mujica on March 5, 2001, when claimant discussed having paresthesias and numbness in the bottom of both feet and on the left hand. Dr. Mujica decided to do an MRI scan of the cervical spine and thoracic spine, as well as the lumbar spine. At the next visit on March 23, 2001, Dr. Mujica discussed with claimant a large chronic right C6-7 disc herniation and a small herniation on the right side at C6-7. Dr. Mujica, however, pointed out that claimant was not symptomatic from the cervical disc herniation and recommended no surgical treatment for it unless he develops progressive myelopathy or radiculopathy.

It is noted in the medical reports that claimant's description of his symptoms is very specific to the various health care providers who were attending him. It is difficult to understand how claimant could be so specific with regard to one area of the body and fail to mention another area if that injury were actually involved from the November 15, 2000, incident.

In workers compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g).

In this instance, the Appeals Board finds claimant has failed to prove a connection between his ongoing cervical complaints and the November 15, 2000, injury with respondent.

Claimant, in his brief to the Board, argues extensively regarding the issue of notice as to the alleged cervical injury. However, at preliminary hearing, notice was not raised as an issue and the Administrative Law Judge made no decision based upon a notice issue. Additionally, as claimant has failed to prove accidental injury arising out of and in the course of employment as to the cervical spine, that would render the notice issue moot. The Appeals Board, therefore, will not rule on whether notice was timely filed under K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated January 13, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2002.

BOARD MEMBER

c: Michael H. Stang, Attorney for Claimant
Frederick J. Greenbaum, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director